

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2487

H. P. 1949 House of Representatives, February 6, 1974
Referred to Committee on Business Legislation. Sent up for concurrence
and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Cooney of Sabattus.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

**AN ACT to Regulate Credit Terms in the Retail Sale of Heating Oil for
Residential Use.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there have been significant shortages of petroleum products and increases in the prices thereof; and

Whereas, under these circumstances, it is imperative that consumers and retail dealers be protected from unreasonable changes in credit practices; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 37-A, c. 5, additional. Title 37-A of the Revised Statutes is amended by adding a new chapter 5 to read as follows:

CHAPTER 5

**EMERGENCY REGULATION OF CREDIT
TERMS IN HOME HEATING OIL SALES**

§ 131. Purposes

The Legislature finds the peace, health and safety of the people of the State of Maine are seriously threatened by current and projected shortages of

petroleum products and immediate action is necessary in order to insure equitable distribution of home heating oil for residential consumers.

To that end, the Legislature intends to exercise the police powers of this State in order to protect consumers and retail dealers from unreasonable changes in credit terms in sales of fuel for home heating purposes and to ensure deliveries of such fuel on a cash basis whenever justification for refusing credit sales exists.

§ 132. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Assigned customer. "Assigned customer" means any customer assigned to a retail or wholesale distributor by the Maine Bureau of Civil Defense or the Federal Energy Office pursuant to federal or state allocation programs.

2. Consumer. "Consumer" means any person, firm or corporation which purchases residential heating fuel for use in a residence and not for resale.

3. Credit or payment term. "Credit or payment term" means any provision made by the seller for the payment of his posted retail price and shall include without limitation 30, 60 or 90-day accounts with or without carrying charges, equal-installment payment plans, discounts for prompt or cash payments and demands for the payment of past due bills.

4. Director. "Director" means the Director of the Bureau of Civil Defense.

5. Established customer. "Established customer" means, with respect to a particular seller, any consumer or retail dealer to whom that seller has sold residential heating fuel unless after the last sale of such products, such a consumer or retail distributor has become the established customer of another seller or has rejected an unconditional offer by such seller to sell such products because of a decision to purchase from another seller.

6. Historical credit policy. "Historical credit policy" means any credit term or payment term regularly offered during a base period prescribed by the director pursuant to section 133, by a seller of residential heating fuel, whether at retail or wholesale, to substantially all of his established purchasers having similar credit or payment histories.

7. Residence. "Residence" means any building, structure or part thereof, in use by one or more persons as his or their principal dwelling place.

8. Residential heating fuel. "Residential heating fuel" means any petroleum product commonly burned in residential furnaces for space heating and water heating, including without limitation such fuels commonly referred to as No. 1 oil, range oil, stove oil, kerosene, No. 2 oil, home heating oil, No. 6 oil, residual oil, propane, butane and any combination or mixture thereof.

9. Retail dealer. "Retail dealer" means any person, firm or corporation which sells residential heating fuel to consumers, provided that any person,

firm or corporation which sells both to consumers, as defined herein, and to nonconsumers shall be deemed a retail dealer only to the extent of his sales to consumers.

10. Wholesale distributor. "Wholesale distributor" means any person, firm or corporation which sells petroleum products to retail dealers for resale to consumers as residential heating fuel, provided that any person, firm or corporation which sells to consumers and others, as well as retail dealers, shall be deemed a wholesale distributor only to the extent of the sales to retail dealers.

§ 133. Rules and regulations

The director is hereby authorized to adopt, after consultation with the Commissioner of the Department of Business Regulation and the Attorney General and after public hearings, such rules and regulations governing payment and credit terms in retail and wholesale sales of residential heating fuel as he shall determine are necessary to accomplish the purposes of this chapter.

§ 134. Provisional rules

Until such time as the director has issued supervening regulations, the following rules shall be in effect and enforceable pursuant to section 133.

1. Except as provided in subsection 2, no retail dealer or wholesale distributor shall impose in the sale of residential heating fuel a credit or payment term which:

A. With respect to customers with whom the seller did not have an established trading relationship at any time during 1972, is more stringent than the historical credit policy maintained by the dealer or distributor during the same 12-month period toward customers with the same or similar credit or payment histories; or

B. With respect to customers with whom the seller had an established trading relationship at any time during 1972, is more stringent than the credit or payment terms actually and most recently imposed in sales to that customer during the same 12-month period.

2. Notwithstanding subsection 1, paragraph B, a seller may impose more stringent credit terms in the sale of residential heating fuel to a customer with whom the seller had an established trading relationship during 1972, if the risk of nonpayment by the customer is significantly greater than it was when credit terms were last offered to the customer by the dealer in that period, provided that the payment and credit terms imposed are consistent with the historical credit policies of the seller for that same period.

3. In no event shall a retail dealer or wholesale distributor refuse to sell residential heating fuel to an established or assigned customer, solely by reason of the fact that the customer owes past due bills for products or services previously rendered or supplied by the dealer or distributor to the customer, if such customer is ready, willing and able to pay the lawful price of such products upon delivery in cash or by certified or cashier's check.

4. No retail dealer shall refuse to sell residential heating fuels to a consumer who is an established or assigned customer on the ground that the consumer's storage facilities are unsuitable or insufficient, or the quantity ordered is insufficient, if the retail dealer regularly sold such products to the same consumer or to consumers with similar storage facilities or sold in similar quantities to the same or other consumers in 1972.

5. In no event shall a retail dealer refuse to sell residential heating oil to an established or assigned consumer, unless that consumer and the director have been given 5 business days' advance written notice of the retail dealer's intent to refuse sale.

6. Nothing in the foregoing rules shall be construed to require conduct or to produce a result inconsistent with any state or federal laws, rules, regulations or orders related to the allocation, rationing or pricing of petroleum products.

§ 135. Enforcement

1. Any customer having reason to believe a sale to him or a refusal to sell to him was in violation of this chapter, or of the rules and regulations adopted pursuant thereto, may file with the director a complaint setting forth the details of the alleged violation, including the name and address of the retail dealer or wholesale distributor involved.

2. Upon receipt of a complaint or on his own initiative, the director shall forthwith cause an investigation to be made, and in the course thereof, he or his appointed representative may inspect books, records, letters, contracts and billing invoices relevant to the violations alleged.

3. If upon investigation, the director determines a violation has occurred, he shall, within 5 business days of receiving a complaint, issue such orders as may be necessary to secure compliance with this chapter or the rules and regulations issued pursuant thereto. A copy of such order accompanied by a statement of the findings on which the director found a violation to exist shall be served upon the person, firm or corporation to which it applies.

4. The director shall have the power to petition the Superior Court in the county wherein the violation in question occurred for the enforcement of such order and for appropriate temporary relief. Upon the filing of such petition, the court shall cause notice thereof to be served on the persons, firms or corporations to which the order applies, and thereupon, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the director.

5. Any person aggrieved by an order of the director may obtain a review of such order in the Superior Court of the county wherein the violation in question occurred, by filing in such court a written petition praying that the order of the director be modified or set aside. Upon the filing of such petition,

the court shall proceed in the same manner as in the case of an application by the director under subsection 4 and shall have the same jurisdiction to grant to the director such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the director.

6. The commencement of proceedings under subsections 4 and 5 shall not, unless specifically ordered by the court, operate as a stay of the director's order.

7. Petitions filed under this chapter shall be heard expeditiously, and if possible within 10 days.

§ 136. Subpoena powers

In investigating violations of this chapter or the rules and regulations issued pursuant thereto, the director shall be empowered to compel by subpoena the attendance of witnesses and the production of books, papers, records and documents. Any Justice of the Superior Court shall, upon petition of the director, enforce any subpoena lawfully issued pursuant to this section.

§ 137. Inter-agency cooperation

The Attorney General and the Commissioners of the Departments of Business Regulation and Public Safety may provide the director such technical and professional assistance as he may require in the development of regulations, the investigation of complaints and the service and enforcement of orders.

§ 138. Penalties

Whoever willfully violates any provision of this chapter shall be punished by imprisonment for not more than one year or by a fine of not more than \$500, or by both.

§ 139. Termination

The authority conferred by this chapter shall terminate at midnight on February 28, 1975 or at such earlier time as the director may determine that the emergency condition recited in this chapter no longer exists or that further regulation in the manner provided by this chapter will no longer accomplish the purposes of this chapter.

Sec. 2. Effective date; application. In view of the emergency cited in the preamble, this chapter shall take effect when approved and shall apply to any sale wherein delivery occurs on or after such date.

STATEMENT OF FACT

The purpose of this legislation is to temporarily prevent wholesale distributors and retail dealers from taking unreasonable advantage of shortages and

expected shortages by changing normal credit practices and further to assure that no residential purchaser willing to pay cash be denied delivery on an essential commodity like heating oil solely because past accounts are overdue.

This bill is included in the Governor's call.